

ST. REGIS MOHAWK TRIBAL COURT

Lori Ann David,)	
Appellant)	
)	
<i>By Michael Rhodes-Devey</i>)	
)	CASE NO # 10-LND-00003
V.)	
Charity Benedict [on behalf of her)	
daughter Makalli Hayze David])	
Appellee)	
)	
<i>By Lorraine White</i>)	

DECISION AND ORDER

I. PROCEDURAL HISTORY

On July 18th, 2009 Michael Joey David unexpectedly passed away intestate (without leaving a will). The Tribal Council appointed Lori Ann David Administrator, of her son, Michael Joey David's Estate August 20, 2009. (*See*, SRMT TCR 2009-53 dated 8-20-2009). September 8th, 2009 the SRMT Council on behalf of the estate of the late Michael Joey David issued a Right and Occupancy deed to Lori David for lot#703-1.

On November 15, 2010, Charity Benedict [on behalf of her minor child who is a child of Michael Joey David]¹ filed a land dispute with the SRMT Land Dispute Tribunal [hereinafter LD Tribunal] against Lorie Ann David for transfer of lot 703-1 into Michael Joey David's minor child. (*See*, LD Form dated 11-15-2010). The SRMT LD Tribunal amongst its findings held that Mykalli Hayze David, whose mother is Charity Benedict, is the sole heir of Joey Michael David.

Petitioner, Lorie Ann David, filed a timely appeal in the St. Regis Mohawk Tribal Court, on April 14th, 2011, against Charity Benedict, from a Tribunal Land Dispute decision dated March 18th, 2011. Petitioner seeks to have the Court substitute its' own judgment for that of the LD Tribunal's. (*See*, Appellant's Complaint). Respondent, Charity Benedict [on behalf of her minor child] filed a timely answer dated May 9th, 2011 asserting that the land belongs to Michael David's daughter as his heir. (*See*, Appellee's Answer).

¹ This was a finding of the SRMT Land Dispute Tribunal.

The first pre-trial conference was scheduled for May 25th, 2011. During this period Lorie David retained attorney Mr. Michael Rhodes-Devey who requested copies of all papers in this action be served upon him. (*See*, Notice of Appearance dated May 20, 2011).

The parties appeared on May 25th 2011. An additional pre-trial conference was set for June 22, 2011. During this period, the Respondent retained the services of Ms. Lorraine White. (*See* Appearance Notice dated June 22, 2011). On June 22, both parties appeared with their respective attorneys. It was at this appearance that Petitioner's attorney motioned to submit affidavits containing new evidence. The Court did not accept the affidavits and asked that the Petitioner provide a brief as to why this new evidence should be allowed on appeal. Petitioner was given till July 15th to file a brief and the Respondent was given till August 22nd to file a response to the brief. A hearing date was set for September 28th. At this hearing an issue arose in respect to the decedent having an additional heir, which was not addressed by the SRMT LD Tribunal.

This decision and order is based upon whether the second heir, also a minor child of Michael Joey David, has a right to be a party to the proceedings before the court.

II. DISCUSSION

Although we have discussed this at length in *White v. White*², it is of essence in the case before the bar to reiterate the following. On June 6th, 2009 St. Regis Mohawk Tribe (SRMT) held a referendum concerning land disputes within the jurisdiction of the St. Regis Mohawk Tribe. Pursuant to this referendum, the Tribal Council enacted SRMT TCR 2009-69, Land Dispute Resolution Ordinance (Amended by TCR 2011-20 Land Dispute Resolution Ordinance) [*hereinafter* SRMT LDRO], which delegated Tribal Council authority to resolve land disputes on the reservation, and render final decisions, to a newly formed Land Dispute Tribunal and the SRMT Court. The ordinance not only delegates authority from the SRMT Council to the LD Tribunal and Tribal Court, it also specifically defines the composition of the LD Tribunal, and how the LD Tribunal is to proceed procedurally with all land disputes that come before it. The LD Tribunal under the SRMT Land Dispute Resolution Ordinance is to act as fact finders, while the Tribal Court when hearing an appeal from a LD Tribunal decision is to review the record developed by the Tribunal. The Court in reviewing the record may affirm the decision or may

² *White v. White*, (SRMT Ct., Case No. 10 LND-00009, July 2012).

vacate the decision and substitute its own decision. (*See*, SRMT LDRO §XV (B)(2)). Where it becomes less clear is what actions may the Court take in correcting any errors that may have occurred at the Land Dispute Tribunal level.

The Land Dispute Tribunal amongst its findings held that Mykalli Hayze David, whose mother is Charity Benedict, is the sole heir of Joey Michael David. In coming to this decision, the Tribunal relied heavily on §V (E) of the SRMT LDRO, a Donaldson Funeral Home Obituary,³ and on the testimony of the Appellee, Ms. Benedict. (*See*, Final Hearing digital recording LD-2010-007BEN). Pursuant to the SRMT LDRO, “when a Tribal member dies without leaving a Will, their real property located on the Reservation shall pass to Tribal members as follows:”

The surviving Tribal member spouse shall inherit the possessory interest formally held by the deceased spouse. (*See*, §V (E)(1)).

If there is no surviving Tribal member spouse, the surviving Tribal member **children** shall receive equal possessory interests in tribal lands formally held by a deceased tribal member parent. (*See*, §V(E)(2)[emphasis added]).

In any case where minor children may be entitled to a possessory interest, the land shall be held in trust by a Legal Guardian until they reach the age of maturity, which is 18 years old. (*See*, §V(E)(3)).

If there is no surviving Tribal member spouse or Tribal member children of the deceased, Tribal member grandchildren shall receive equal possessory interests. (*See*, §V(E)(4)).

If there is no surviving spouse or descendants, the parents of the deceased shall receive the possessory interest. (*See*, §V(E)(5)).

In the event that a deceased Tribal member has no Tribal member spouse, children, or grandchildren, or parents, the surviving brothers and sisters, then the surviving nieces or nephews shall receive equal possessory interests in tribal land formally held by the deceased tribal member. (*See*, §V(E)(6)).

If there are no survivors of the deceased Tribal member, the property shall revert back to the Tribe. (*See*, §V(E)(7)).

³ (*See*, “Michael Joey David Obituary - July 18, 2009.” *Donaldson Funeral Home - Massena, NY* 315.769.3579. 18 July 2009. Web. 10 Nov. 2011. <http://www.donaldsonfh.com/obituary.php?id=448>).

The LD Tribunal correctly identified that SRMT LDRO §V (E), Intestate Distribution, applied to the case before them because Michael Joey David passed without leaving a will. They also correctly identified that Charity Benedict was not Michael Joey David's 'legal spouse' and as such pursuant to §V (E)(1) of the SRMT LDRO Charity Benedict could not inherit his possessory interest in the property.⁴ They also correctly identified that pursuant to §V(E)(3)(4) Michael Joey David's possessory property interests should be inherited by his surviving Tribal member "children," and where the heir is a minor the possessory interest should be held in trust by the legal guardian until they reach the age of maturity.

During the LD Tribunal's final hearing, Ms. Benedict was asked if Mykalli Hayze David was the "only biological child of Michael Joey David," and Ms. Benedict answered yes. (*See*, Final Hearing digital recording LD-2010-007BEN at 37.45). When Ms. David gave testimony, the Tribunal did not ask her whether Michael Joey David had any other children. (*See*, Final Hearing digital recording LD-2010-007BEN). It appears that the parties were not in the same room while each gave their final testimony to the LD Tribunal. As such, the parties did not know questions asked of the other party, nor were they given an opportunity to address questions not asked of both parties such as whether Michael Joey David had other children.

The LD Tribunal clearly relied on the Ontario birth record⁵ for Mykalli Hayze David along with Donaldson's Funeral Home obituary, for Michael Joey David, in determining that Charity Benedict was his companion and that Mykalli Hayze David is his daughter. (*See*, SRMT LD Tribunal decision dated 3-18-2011 p.2; *See also*, SRMT LD Tribunal Evidentiary list on file with the SRMT Court). The Donaldson's Funeral Home obituary provides:

He [Michael Joey David] is survived by his companion Charity Benedict; a daughter Mykalli Hayze David; a son Michael Joey David-Delormier... (*See*, Supra FN 2.)[Brackets added].

Clearly, the obituary identifies another potential heir. As such, the LD Tribunal erred in failing to adequately address that Michael Joey David had an additional potential heir, Michael Joey David-Delormier who is also a minor child. This other heir was clearly listed in the obituary the LD Tribunal relied on in making the decision with respect to Mykalli Hayze David being an heir. Since the Court's decision is final,⁶ not addressing the issue of the additional heir would deprive Michael Joey David's other potential heir, Michael Joey David-Delormier, a minor, due process.

⁴ As is evident, the SRMT Land Ordinance does not 'recognize' common law 'marriages' or spouses.

⁵ *See*, Ontario, Canada Birth Record # P 941365 dated 2-27-2009.

⁶ *See*, SRMT TCR 2009-69, Land Dispute Ordinance § XV (D).

As a potential heir, the issue of Michael Joey David-Delormier should have been addressed, and made into the findings, by the LD Tribunal.

Some of the confusion in the case at bar may originate from the fact that there is no clear legislative mechanism to address the current situation of a potential minor heir to state a claim. Nevertheless, the SRMT LDRO provides two opportunities to address such issues. First, by granting extensions of time; (See, SRMT LDRO §VII (B)), and secondly, by an 'interested person's' designation. (*See generally, Id.* §IV. F).

With respect to this issue and the case at bar, there is no 'true' fault of the LD Tribunal as there is no established case law, rules, or regulations, in addressing such matters. Nonetheless, in the future the LD Tribunal should recognize when matters before them may or should require further review. For instance:

- 1.) When a matter involves an intestate dispute, and/or
- 2.) There is a question with respect to issued letters of Administratrix/ Administrator and/or
- 3.) There are questions of intestacy involving minor children and/or
- 4.) When there is issue that 'persons of interest' or their guardians have received proper notification. Particularly for potential heirs who are minors.

The public notice alerting "Interested Persons" was flawed in that it failed to define that the land dispute involved the estate of the late Michael Joey David; thus, it is plausible that this defect could cause a rightful interested person to not be notified. In addition, the Court is not convinced that the 'Interested person' requirement is met by the failure of a legal guardian or parent to file a notice with the LD Tribunal, particularly in instances involving an infant or minor. The reasons why a legal guardian may choose to not get involved are endless, why a minor child should see a diminishment of their inheritance rights for that choice is not as clear. Furthermore, as provided, this is preventable. Finally, since a decision on appeal to the SRMT Court, under the SRMT LDRO, would make the decision in this matter final with no chance of appeal, such an action could further deprive the potential heir, minor child, of any due process.

Therefore, the Court feels that by requiring the Land Dispute Tribunal to stringently insure that personal notice on minor children/their guardian involving land disputes with intestacy questions is provided, will help alleviate the normal stresses and unresolved questions associated with land disputes here on the SRMT Reservation. There should be no need to create a 'future' land dispute, not even in the guise of judicial expediency, particularly when the LD Tribunal has

authority to issue an extension as necessary to address heirs of SRMT members who are minor children.

II. Conclusion

In conclusion, in reviewing the record before the Court it is clear that the LD Tribunal relied upon the Donaldson's obituary to determine that Makalli Hayze David was a child of Michael Joey David. However, they failed to resolve whether Michael Joey David Delormier (a minor), who was also clearly mentioned as a child of Michael Joey David in the obituary, is a potential heir. Since this Court, pursuant to the SRMT Land Dispute Ordinance, is a Court of last resorts, this error must be corrected now in the interest of justice and fairness.

Based upon the aforementioned reasons equity requires that the minor child Michael Joey David Delormier has an equal right to pursue his interest in this case, as does Makalli Hayze David and as such, Michael Joey David Delormier shall be a party in the case at bar as if he were a party in the Land Dispute Tribunal.

Furthermore, pursuant to this decision the Court will set July 9 at 10 AM as the date to conduct a status conference with the parties and their attorneys to proceed based upon this decision.

Entered by my hand on this the 12th day of June 2013



Peter J. Herne, Chief Judge
Saint Regis Mohawk Tribal Court

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